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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/639,530	05/01/96	ZHENG Y	PAT-1102

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PM82/0411

EXAMINER	
CANFIELD,R	
ART UNIT	PAPER NUMBER
3635	12

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/639,530	Applicant(s) Zheng
	Examiner Robert Canfield	Group Art Unit 3635

☒ Responsive to communication(s) filed on *Feb 11, 1997* .

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1 and 16-28* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1 and 16-28* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Prosecution is hereby reopened for application serial number 08/639530 filed 05/01/1996. Claims 1 and 16-28 are pending. Claims 2-15 have been canceled.

2. Claims 1, 16-28 of this application has been copied by the applicant from U. S. Patent No. 5,411,046 to Wan. These claims are not patentable to the applicant because of the rejections which follow below.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claim be patentable to the applicant subject to a judgement in the interference.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1, 16-18, 20 and 23-28 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent 5,038,812 to Norman.

Norman shows wall members 802 each having a flexible frame (106 in figures 7, 8), wall panels (802 with peripheral channel 110), frames in generally triangular/rectangular shapes (figures 30, 31) with sides extending from the top of the tent, a base, hinge joints between

adjacent wall members (figures 7 and 8), a tent floor 804, a roof A, a door opening 852. As to claims 16 and 26, the pocket is an opened cavity 110 containing frame 106 excluding the folded outer section S, an elongate strip of foldable material S. See figure 8 for claim 23.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,038,812 to Norman.

Norman provides each of the elements of the claim except for ground ties.

Ground ties are old and well known in the tent art.

The examiner takes Official Notice that it would have been obvious at the time of the invention to one having ordinary skill in the art to have provided ground stakes with the tent of Norman. It would have been obvious so as to secure the tent to a ground surface.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,038,812 to Norman in view of U.S. Patent 4,352,362 to Nichols.

Norman provides each of the elements of the claim except for the closable opening forming a door in at least one of the wall panels.

Nichols teaches providing the closable opening 16/18 to form a door/window within a tent wall panel.

It would have been obvious at the time of the invention to one having ordinary skill in the art that a door/window could have been provided within the wall panels 802 of Norman in light of the teachings of Nichols. It would have been obvious so as to provide a door, window or vent within the panel.

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,038,812 to Norman in view of U.S. Patent 4,425,929 to Von Mosshaim.

Norman provides each of the elements of the claim except for transparent or translucent material as the covering material.

The use of transparent or translucent material as a tent covering material is known in the tent art as demonstrated by Von Mosshaim. Von Mosshaim teaches at column 3 lines 22+ that translucent/transparent materials are known material choices for tent covering depending on the intended use of the tent. For example transparent covering materials are preferred for greenhouse applications.

Translucent and transparent materials would have been obvious material choices at the time of the invention to one having skill in the art for the tent of Norman in view of the teachings

of Von Mosshaim. They would have been choices design depending on the amount of light desired to penetrate the tent in its intended use.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1, 16, 17, 20, 21, 23-26 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U. S. Patent No 5,467,794 and claims 1-15 of U.S. Patent No. 5,579,799. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is covered by the patent since the patent and the application are claiming common subject matter, as follows: foldable tents formed from three or more joined wall members each having a flexible frame and connected by foldable material/hinged sleeves.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

11. Claims 1, 16-18, 20, 21, and 23-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U. S. Patent No 5,816,279. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is covered by the patent since the patent and the application are claiming common subject matter, as follows: foldable tents formed from three or more joined wall members each having a flexible frame and connected by foldable material/hinged sleeves.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

12. Claims 19 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U. S. Patent No 5,467,794, claims 1-15 of U.S. Patent No. 5,579,799, and claims 1-8 of U.S. Patent No. 5,816,279. Although the conflicting claims are not identical, they are not patentably distinct from each other because

ground ties and transparent/translucent material have been shown to be obvious choices of design as noted in the above rejections.

13. The drawings are objected to because Figure 14A and Figure 15 cannot be connected by a lead line. Correction is required.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Canfield whose telephone number is (703) 308-2482. The examiner can normally be reached on M-Th.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Robert Canfield

April 5, 2001

Robert Canfield
Primary Examiner